**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 13 2010

REPLY TO THE ATTENTION OF:
WW-16J

Mr. James M. Townsend, Chief, Regulatory Branch
U.S. Army Corps of Engineers, Louisville District
600 Dr. Martin Luther King Pl
Louisville, Kentucky 40202

Subject: Public Notice LRL-2007-1379, Little Sandy Coal Company, Hilsmeyer Mine

Dear Mr. Townsend:

The U.S. Environmental Protection Agency (EPA) visited the Hilsmeyer Mine site on August 17, 2010 with Army Corps of Engineers Newburgh field office staff (Corps), a representative of Little Sandy Coal Company (LSCC), and a consultant from Wetland Services. This is our third correspondence with the Corps regarding this proposed mine. EPA is not aware of any changes to the application following the June 11, 2010 letter and August 17, 2010 site visit. However, the Corps has provided EPA with a copy of the 2009 biological sampling report. EPA offers the following comments based on this report and our visit to the proposed mine site:

*Permit application*

During the site visit, it was bought to EPA's attention that the western section of the proposed project area will not be mined because LSCC no longer has the lease for the land. EPA feels the far west section should not be considered an avoidance area as part of the proposed project because the leases can still be acquired by another mining company and impacted by surface coal mining. As such, we request the applicant recalculate and report the total amount of stream and wetland impact and the newly proposed stream and wetland avoidance and minimization on site, as the information in the revised application is incorrect.

To date, EPA has not received all the information requested in our previous letter. The following list highlights the additional information solicited for this project:

Groundwater Information (including the Hydrologic Analyses)
Reclamation Plan – Protection of Hydrologic Balance
Surface Water Monitoring Plan
Areas Unsuitable for Mining
Corrected Mitigation Map (ex. location, planform geometry, buffers, monitoring locations)
Impact types specified by reach (ex. mine-through, haul road, pond construction, etc.)
Cumulative Impacts and Scope Analysis

Long Term Management Plan (real estate instrument)
Contingency Plan
Financial Assurances

This information is necessary in order for the Agencies to continue to conduct a comprehensive review of this project. The project application, as submitted, lacks the details necessary to provide a proper evaluation and no permitting action should be taken until this information is reviewed.

*Avoidance and Minimization*

In order to be compliant with the 404(b)(1) Guidelines (Guidelines), the applicant must follow a sequence of steps which begins with avoidance of impacts, followed by minimization of impacts and finally compensation for any remaining unavoidable impacts. EPA believes that LSCC has not avoided and minimized impacts to streams and wetlands to the maximum extent practicable. The exclusion of the far west section of the proposed project area greatly reduces the extent of avoidance and minimization counted by the applicant. We recommend LSCC provide a wider range of alternatives and better documentation of avoidance and minimization within the proposed mine boundaries in order to assist the Agencies in appropriately evaluating the project under the 404(b)(1) Guidelines. This should include a discussion of alternative mine designs which consider reducing impacts to waters through the relocation of sediment basins, haul roads and attendant features.

During the site visit, EPA staff reviewed the location of avoided reaches. One section of an avoided reach exhibited characteristics of good quality streams. Stream flow was not continuous but there were isolated pools which were receiving water from subsurface and groundwater discharge. Fish and macroinvertebrate species were observed. While the avoided streams on site generally exhibit good quality habitat structure and substrate, some sections of the avoided stream channels appeared to be incised. As stated in the permit application, "The consequence of an entrenched channel is accelerated stream bank erosion, land loss, aquatic habitat loss, lowered water table, reduced land productivity and downstream sedimentation."[1] Furthermore, riparian buffers are not proposed for these reaches post mining, which may further contribute to channel instability. EPA expects that the post mining stream network as a whole must adequately convey drainage from the post-mining watershed with minimal erosion and destabilization of the stream channels. EPA requests that the Corps require the applicant to provide some level of mitigation for these reaches, either through enhancement or restoration.

*Ecological Performance Standards*

LSCC conducted a biological study during June 2009 using three sampling points to characterize the ecological condition of the impacted streams within the project area. The study followed the EPA Rapid Biological Assessment Protocol for wadeable streams (RBP) and Indiana Department of Environmental Management's macroinvertebrate and fisheries Indices of

[1] Rosgen, D.L., 1997. A Geomorphological Approach to Restoration of Incised Rivers. Proceedings of the Conference on Management of Landscapes Disturbed by Channel Incision. Center for Computational Hydroscience and Bioengineering, Oxford Campus, University of Mississippi, Pages 12-22.

Biotic Integrity. The use of three sampling points is not an accurate representation of the overall quality of the intermittent streams on site. LSCC should detail the existing physical, chemical and biological conditions of *all* streams proposed to be impacted to the extent possible. Biological monitoring, along with chemistry and physical assessments, should be conducted prior to the initiation of mining activities to establish baseline conditions, during mining activities to assist in determining potential impacts to aquatic habitat and water quality downstream of the impacts. Long term monitoring should continue at least ten years after the completion of stream restoration and site reclamation activities at the mine site where appropriate. Throughout the monitoring, there should be established performance standards which are part of the special conditions of the permit in order to determine and ensure mitigation success.

*Mitigation*

EPA continues to assert that additional stream mitigation opportunities are needed to replace the aquatic functions and values that would be lost as a result of this project. Section J of the 404(b)(1) Guidelines requires a minimum 1:1 linear foot compensation ratio.[2] EPA understands that the replacement of all streams on site may not be possible. However, this would not preclude the applicant from addressing proposed shortage of mitigation either on or off-site. For example, there may be streams and impoundments that could be restored or enhanced within the watershed to make up for some the shortages in stream impacts, address temporal loss and account for the potential uncertainty in stream restoration. The current stream mitigation plan may not replace the lost functions these headwater streams provide, and as a result, downstream waters would be negatively impacted.

EPA continues to object to the issuance of a permit for the project as proposed as it fails to comply with 404(b)(1) Guidelines and 2008 Compensatory Mitigation Rule. There are still a number of unresolved issues that must be addressed and information that must be provided to the Corps before an informed permit decision can be made. Please notify us of Little Sandy Coal Company's response to these comments and any changes to the permit application. We appreciate the opportunity to provide additional comments on this public notice. Please contact Kerryann Weaver (312-353-9483) if you have any questions.

Sincerely,

Peter Swenson

Peter Swenson, Chief
Watersheds & Wetlands Branch

cc: Mr. Sam Werner, CELRL-OP-FW
U.S. Army Corps of Engineers, Louisville District

[2] 40 CFR Part 230.9 f(2)

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